
VOLUME 2. AIR OPERATOR CERTIFICATION

CHAPTER 6. FOREIGN AIR CARRIERS OPERATING TO THE U.S. AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE OUTSIDE THE U.S.

SECTION 3. COMPLIANCE, SURVEILLANCE, AND ENFORCEMENT

703. GENERAL.

A. Article 16 of the Chicago Convention states that the appropriate authorities of each state have the right, without unreasonable delay, to search foreign civil aircraft on landing or departure, and to inspect the certificates and other documents prescribed by the Convention. Sections 40113 and 46101(a)(2) of Title 49 United States Code (U.S.C.) (formerly 313 and 1002 of the Federal Aviation Act (FA Act) of 1958) empower the Administrator to conduct such investigations considered necessary to carry out the provisions of the U.S.C.

B. Section 41703 of Title 49 U.S.C. (formerly § 1108(b) of the FA Act) states that foreign civil aircraft may be navigated in the United States by airmen holding appropriate certificates issued by the state of registry of the aircraft and only if such navigation is authorized by permit, order, or regulation issued by the Department of Transportation (DOT), and in accordance with the terms, conditions, and limitations thereof.

C. Permits issued by DOT under 41302 of Title 49 U.S.C. (formerly § 402 of the FA Act) to foreign air carriers contain specific terms, conditions, and limitations. Among these conditions are requirements that each permit holder comply with the following:

- Operational safety requirements at least equivalent to Annex 6 of the Convention
- All applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the U.S.

D. Section 40109 of Title 49 U.S.C. (formerly § 416(b) of the FA Act) exemptions issued by DOT to foreign air carriers conducting short-term exemption operations (normally no more than 10 flights into the U.S.) also require compliance with subparagraph 293C.

705. COMPLIANCE. Each foreign air carrier operating within the U.S. must comply with each applicable requirement in Title 14 of the Code of Federal Regulations (14 CFR) and in accordance with its operations specifications. Additionally, each person operating a U.S.-

registered aircraft outside the U.S. must comply with 14 CFR part 91 § 91.703 and, if engaged in common carriage operations 14 CFR part 129 § 129.14.

707. SURVEILLANCE.

A. *Purpose.* Aviation safety inspectors (ASI) shall conduct surveillance of each foreign air carrier and its aircraft and operations. The surveillance task is to determine compliance with the regulations and the foreign air carrier's operations specifications. Surveillance of a foreign air carrier shall be conducted on a routine or recurring basis. If a foreign air carrier experiences a series of accidents, incidents, violations, or complaints (that relate to safety), the district office manager holding the foreign air carrier's operations specifications shall initiate surveillance as necessary to resolve any safety deficiencies.

(1) *Surveillance Program Development.* Offices that issue and/or are holders of operations specifications for part 129 operators shall develop their annual work programs to incorporate any required surveillance "R" items directed under the national program guidelines. Only inspectors who have attended the part 129 training seminar may accomplish these surveillance items.

(2) *Work Programs.* Normally, surveillance of part 129 operators shall be accomplished by the office that issues the operations specifications. Surveillance may include routine and unannounced ramp inspections in addition to the "R" items. Geographic units may plan part 129 surveillance as part of the scheduled work program at the request of the principal inspector and only if the geographic inspector designated to accomplish the surveillance has attended the part 129 training seminar.

B. *Foreign Air Carriers Operating Foreign-Registered Aircraft.* Volume 6, chapter 2, section 2, contains general information for conducting ramp inspections. This information is considered limited for conducting part 129 surveillance as it does not address the differences that inspectors may encounter while inspecting a foreign operator. Normally, principal inspectors shall limit any routine or unannounced ramp inspection of a foreign air

carrier conducting operations with foreign-registered aircraft to those operations being conducted in the U.S. and shall normally include only the following inspection items:

- Aircraft markings
- Aircraft airworthiness and registration certificates
- Flight crewmember certificates
- Air traffic compliance
- Taxi and ramp procedures
- Passenger enplaning/deplaning procedures
- Baggage and cargo (especially hazardous cargo)
- Compliance with pilot-in-command (PIC) age 60 policy (Inspectors must ensure that PICs of foreign- or U.S.-registered aircraft being used in part 129 operations are in compliance with the FAA's policy. See subparagraph 297C.)

C. Pilot Age Policy and Amendment of Operations Specifications.

(1) *FAA Safety Policy.* A foreign air carrier conducting operations within the U.S. using aircraft having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds (3,400 kg) regardless of the state of registry of the aircraft, must comply with the standard contained in Annex 1 to the Chicago Convention of the International Civil Aviation Organization (ICAO) ("Personnel Licensing," chapter 2, "Licenses and Ratings for Pilots," paragraph 2.1.10.1.); that is, to prohibit a flight crewmember from acting as PIC of an aircraft described above if that person has attained his or her 60th birthday and the aircraft is being operated in scheduled or nonscheduled international air transport operations for remuneration or hire.

(2) *Amendment of Operations Specifications.* Principal operations inspectors (POI) of part 129 operators shall add to Part A of each of their assigned foreign flag air carriers' operations specifications a new sequentially numbered paragraph that addresses each carrier's compliance with the PIC age 60 policy, as follows:

"[Air carrier name] may not use the services of, nor may any person act as, a pilot in command of any aircraft having a passenger seating configuration of more than 30 seats or payload capacity of more than 7,500 pounds (3,400 kg) engaged in operations under the authority of these operations specifications, if the 60th birthday of that person has been attained."

D. Foreign Air Carriers Operating U.S.-Registered Aircraft. Inspectors may conduct routine and unannounced ramp inspections (at any location) of foreign air carriers

conducting operations with U.S.-registered aircraft. In addition to including for inspection the items and activities indicated in subparagraph 297B, inspectors should accomplish inspections to determine the following:

- That appropriate U.S. airman certificates are used
- That a U.S. airworthiness certificate is valid for the aircraft
- That an appropriate maintenance program is being used
- That an approved minimum equipment list (MEL) is used, if applicable

E. Frequency of Inspections. Inspectors shall initiate surveillance any time the chief executive officer of the foreign air carrier or the foreign state civil aviation authority requests it in writing. Certain foreign air carriers have requested that FAA inspectors conduct significantly more in-depth inspections of their operations than is required.

F. Need for Diplomacy. Inspectors should take particular care to diplomatically explain, with the foreign air carrier's representative, each discrepancy. Inspectors should also offer suggested corrective action and appropriate FAA assistance to promptly correct each discrepancy. Items not governed by 14 CFR or approved operations specifications (such as training programs, cabin safety procedures, and non-U.S.-registered aircraft maintenance programs) shall not be inspected, unless a specific written request has been made by either the foreign air carrier or the state civil aviation authority of the foreign air carrier, or when directed by FAA Headquarters.

G. Disagreements Concerning Inspection Findings. If a foreign air carrier's representative disagrees with any inspection findings, the FAA office that conducted the surveillance shall prepare a written report of these inspection findings and recommended corrective actions and address it to the state civil aviation authority. After coordinating with the district office holding the operations specifications of the foreign air carrier and the appropriate regional and Headquarters personnel (Flight Standards and Regional/Chief Counsel), the initiating office shall mail the report to the state's civil aviation authority with copies to the appropriate regional Headquarters office, to AFS-1, to the Office of International Aviation (AIA-100), and to AGC-200.

H. Serious Safety Deficiencies. If the surveillance reveals serious safety deficiencies that cannot be corrected through positive action by the foreign air carrier's representative, the foreign air carrier principal inspector must directly consult with either the chief executive officer of the foreign air carrier or the state civil aviation authority, or both. This direct contact will usually result in quick correction of any serious safety deficiency (see paragraphs 267 and 269). If the top management of the foreign air carrier or the state civil aviation authority, or both, fail to take positive action, the FAA shall take swift enforcement action to

amend or revoke (as necessary) the foreign air carrier's operations specifications.

709. COMPLIANCE AND ENFORCEMENT. The FAA's compliance and enforcement program is designed to promote compliance with statutory and regulatory requirements. The ultimate goal of the FAA's enforcement policy is to prevent incidents, accidents, and the occurrence of regulatory violations. This goal is primarily achieved as to foreign air carriers through surveillance of the carrier and through technical assistance and consultations with the carrier's CAA. As with U.S. air carriers, the FAA encourages voluntary compliance by foreign carriers.

A. The compliance and enforcement program provides a wide range of options for addressing noncompliance. In addition to referring apparent violations to foreign governments for appropriate handling, options include administrative action in the form of a warning notice or letter of correction, the suspension or revocation of operations specifications, civil penalties, injunctions, and referrals for criminal prosecution. When the option of suspending the carrier's operations specification (OpSpecs) is selected, the suspension may be for a fixed period of time or an indefinite period pending compliance or a demonstration of qualifications. Enforcement actions against crewmember certificates also may be available if the foreign carrier in its operations uses a U.S.-registered aircraft.

B. When violations occur, FAA personnel must take the action that best promotes safety and compliance with the regulations. FAA personnel are to determine what action to take by evaluating the seriousness and safety risk imposed by the noncompliance. FAA Order 2150.3, as amended, Compliance, and Enforcement Program, provides a description of the authority, responsibilities, policies, guidelines, procedures, objectives, and legal aspects of the FAA compliance and enforcement program. The involuntary amendment, suspension, or revocations of foreign air carrier OpSpecs are actions that can be affected by the procedural requirements of a bilateral air transport agreement. Before taking such actions, the standard language in most bilateral air transport agreements may require the FAA to consult with the State of the Operator of the foreign air carrier. During such consultations, the FAA advises the foreign government of how the foreign carrier is not complying with the applicable safety standards and requirements and provides an opportunity for corrective actions to be taken within a reasonable time. The FAA also should provide this information to the foreign carrier involved. However, the standard agreement language also provides for exceptions to the general consultation requirement. Consultations are not required when the amendment, suspension, or revocation of the OpSpecs is essential to prevent further noncompliance with U.S. law or FAA regulations or with the minimum international

standards applicable to the operations of the foreign carrier.

NOTE: Earlier versions of bilateral air transport agreements between the U.S. and foreign governments may not contain these same provisions and in some cases, the process to revoke, suspend, or limit the operating authorizations or technical permissions of an airline is not discussed. However it is FAA policy that the same process shall be used for all foreign air carriers.

C. Because consultations may be required, involuntary amendment, suspension, or revocation of foreign air carrier OpSpecs may be considered a significant action under FAA Order 2150.3, as amended. Therefore, any International Field Offices (IFO) and International Field Units (IFU) must coordinate these cases with the responsible Regional Division and Washington Headquarters before initiating an action to amend, suspend, or revoke foreign air carrier's OpSpecs. For emergency cases requiring immediate action, the IFO or IFU must provide information on the involuntary amendment, suspension, or revocation to the Regional Division and Washington Headquarters at the same time the action is being taken. This coordination process will also allow for a more effective response to the broad public attention that such actions may draw.

711. FAA-INITIATED AMENDMENT OF FOREIGN OPSPECS – GENERAL. If the FAA determines that an amendment to the foreign air carrier or operator's foreign OpSpecs is justified, the FAA should amend the OpSpecs in accordance with the procedures contained in volume 2, chapter 4, section 2 of this order. In the case of a change in circumstances of a foreign air carrier's operations, or when the FAA has specific safety concerns not of an immediate nature, the following procedures apply:

A. *Change in the Foreign Air Carrier's Operating Environment.* In some cases, FAA may decide to amend a foreign air carrier's OpSpecs due to a change in the operational environment. For example, FAA may create a new OpSpec paragraph to ensure uniform compliance with a certain aspect of the regulations. In such cases, the appropriate principal inspector (PI) may initiate and amend a foreign air carrier's OpSpecs due to the change, without the foreign air carrier having to apply for the change. Once the foreign air carrier has demonstrated or provided documentation as applicable to show compliance with all appropriate parts of the regulations and operational and airworthiness requirements, the OpSpecs may be issued in accordance with the procedures discussed in volume 2, chapter 6, section 2 of this order.

B. FAA has the authority to unilaterally amend a foreign air carrier's OpSpecs (revoke, suspend, or limit the operating authorizations or technical permissions of an airline) when FAA has determined that safety in air transportation and the public interest necessitates such an

amendment. When amending a foreign air carrier's OpSpecs under these circumstances, if immediate action is not essential, the FAA shall notify the foreign air carrier in writing and then allow a minimum of 7 days for comments regarding the proposal. The 7-day period provides the foreign air carrier with an opportunity to submit written information, views, and arguments on the proposal. After reviewing the comments and their merit, the IFO or IFU shall then either rescind or adopt the amendment. If the IFO or IFU decides that the amendment is necessary, every attempt should be made to obtain voluntary acceptance of the amendment by the foreign air carrier, and the final amended OpSpecs should have an effective date of not less than 30 days after issuance. This will provide the foreign air carrier with appeal rights, which are similar to those afforded U.S. air carriers. Some examples of these types of FAA-initiated amendments are as follows:

(1) The FAA will propose to amend a foreign air carrier's OpSpecs when it determines that the foreign air carrier's operating environment or its operational capability is no longer consistent with the operating authorizations, conditions, and limitations contained in its FAA-issued foreign OpSpecs. Examples of such cases are when the foreign air carrier:

- Terminates operations to the US with a specific make/model/series of aircraft that is authorized in its OpSpecs
- Has a series of occurrences involving a particular type of operation (such as domestic RVSM when it is determined that the carrier may not be adhering to all provisions of their FAA-issued RVSM Opspec)
- Terminates a particular type or kind of operation or area of operation (such as when the operator no longer conducts Category II or III approach operations in the US)

(2) FAA also amends a foreign air carrier's OpSpecs when the standard automated OpSpecs have been revised on a national basis and the International Programs and Policy Division, AFS-50, has requested that principal inspectors amend all or part of their operator's OpSpecs.

713. INVOLUNTARY AMENDMENT, SUSPENSION, OR REVOCATION OF FOREIGN OPSPECS - GENERAL. When the FAA cannot reach agreement with the foreign air carrier regarding an FAA-initiated OpSpec amendment under paragraph 300 above, the FAA will *involuntarily amend the foreign air carrier's OpSpecs using the following procedures*. These procedures ensure that the FAA meets its bilateral obligations that affect involuntary amendment of a foreign air carrier's OpSpecs that may be construed as "*revoking, suspending, or limiting the operating authorizations or technical permissions*" of the foreign air carrier.

NOTE: See the flow chart at the end of this paragraph.

A. The International Field Office (IFO) or International Field Unit (IFU) responsible for administration of the foreign air carrier's OpSpecs should prepare a draft letter to the foreign air carrier clearly explaining the proposed OpSpec amendment and the reasons for it. If the proposed amendment is associated with a proposed enforcement action, this may be the letter of investigation (LOI) in accordance with FAA Order 2150.3, as amended.

B. The responsible IFO or IFU also shall prepare a briefing paper in the standard AVS format. The IFO or IFU shall forward the briefing paper and the draft letter described in item (a) above (hereinafter referred to as the package) to the Regional Division.

C. If the Regional Division Manager concurs with the proposed action after coordination with Regional Counsel and the IFO or IFU, the Manager will forward the package to the Manager, International Programs and Policy Division, AFS-50, with copies to AFS-1 and -2 and the International Affairs and Legal Policy Staff, AGC-7. If the Division Manager non-concurs, the package will be returned to the initiating IFO or IFU for other action.

D. When received, AFS-50 will coordinate the package internally and with AFS-1 and AGC-7. Provided all concur with the proposed action and the need for consultations, AFS-50 will initiate the consultation process as set forth below. In the event of non-concurrence with the proposed action, the package will be returned to the originating IFO or IFU through the Regional Division after discussion.

E. AFS-50 will notify the Assistant Administrator for International Aviation (API), Department of Transportation (DOT) and the Department of State (DOS) of the proposal to request consultations and request comments. After comments are received and considered, AFS-50 will either proceed with consultations or the package will be returned to the originating IFO or IFU through the Regional Division after discussion.

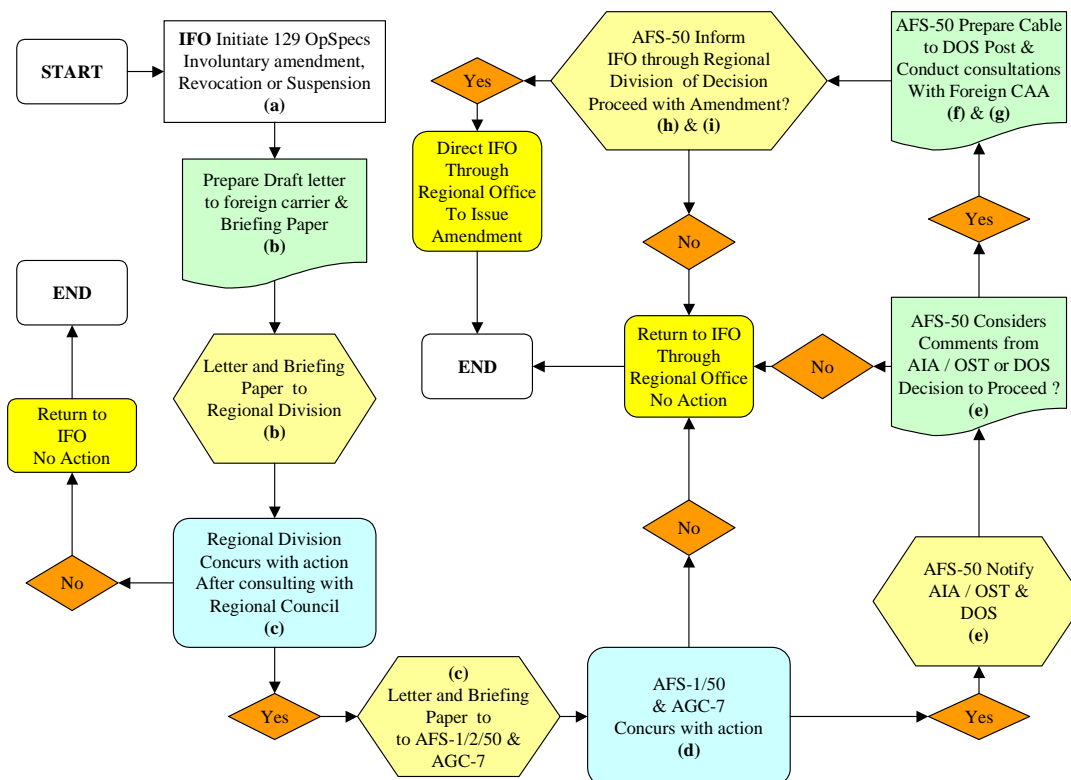
F. If the final decision is made to proceed with consultations, AFS-50 will prepare a cable requesting consultations and forward it to the foreign government through DOS.

G. Assuming the foreign government agrees to the consultations, a team led by AFS-50 will conduct the consultations and brief post staff on the results. AFS-50 will then prepare a decision paper regarding the proposed OpSpec amendment based on the results of the consultations. AFS-50 will make a final decision regarding the amendment in coordination with AFS-1, AGC-7, the IFO or IFU, and the Regional Division. The decision may be to proceed with the OpSpec(s) amendment as proposed, modify the amendment, or return the package to the IFO or

IFU through the Regional Division for no action.

H. Once the decision on the amendment is made, AFS-50 shall prepare a decision cable for transmission through DOS Post to the foreign government notifying it of the decision regarding its air carrier's OpSpec amendment.

I. After the foreign government is notified of the decision to proceed with the OpSpec amendment, the IFO or IFU will be directed by AFS-50 through the Regional Division to issue the OpSpec Amendment without further discussion, effective upon receipt by the foreign air carrier.



715. EMERGENCY AMENDMENT OF FOREIGN OPSPECS.

A. The emergency suspension or revocation of a foreign air carrier's OpSpecs generally occurs after legal enforcement action. FAA Order 2150.3, as amended, contains the information, policies, guidelines, and procedures to be followed by principal inspectors when taking emergency enforcement action, including procedures for issuance of any emergency order.

B. FAA may amend a foreign air carrier's OpSpecs without consultations with the foreign government if the safety or security situation requires immediate action. In such cases, the amendment would become effective immediately upon receipt by the foreign air carrier. This process applies only when an emergency exists which requires immediate action with respect to safety and when the other procedures to amend OpSpecs are impractical or contrary to the public interest, or when the FAA has reasonable grounds to believe that the foreign carrier or their government has departed from the aviation security provisions of Article 7 of the bilateral air transport agreement. In the case of aviation security issues in accordance with Article 7, the FAA may request immediate

consultations with the CAA of the foreign air carrier. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization and technical permissions (OpSpecs) of a foreign air carrier. In this case as well, when required by an emergency, the FAA may take interim action prior to the expiry of 15 days.

Example 1. An emergency amendment to a foreign air carrier's OpSpecs would be justified if the foreign air carrier is knowingly operating an unairworthy aircraft or using unqualified crewmembers in the operation.

Example 2. An emergency amendment to a foreign air carrier's OpSpecs would be justified if the foreign air carrier is operating flights into the United States in violation of U.S. security requirements, including the requirements of its Transportation Security Administration (TSA) foreign air carrier

security program.

C. Further Guidance. An emergency amendment to a foreign air carrier's OpSpecs requires close coordination between the IFO or IFU, the Regional Division and Washington Headquarters. Unless the gravity of the safety or security situation precludes prior notification, an effort will be made to first comply with the procedures in paragraph 301 A through D. When the gravity of the safety or security situation precludes prior notification in the interest of safety, the amendment should be made using the above procedures as soon as possible. AFS-50 will be responsible for any coordination with the foreign government, which may include the following actions after being notified of the emergency action:

(1) Preparation of a cable describing the action taken and coordinate it with API, DOT, and DOS.

(2) Sending the cable to DOS Post for delivery to the foreign government.

D. Under 49 U.S.C. § 40106(b), when the President decides that the government of a foreign country is acting inconsistently with the Convention for the Suppression of Unlawful Seizure of Aircraft or that the government of a foreign country allows territory under its jurisdiction to be used as a base of operations or training of, or as a sanctuary for, or arms, aids, or abets, a terrorist organization that knowingly uses the unlawful seizure, or the threat of an unlawful seizure, of an aircraft as an instrument of policy, the President may suspend the authority of:

(1) an air carrier or foreign air carrier to provide foreign air transportation to and from that foreign country;

(2) a person to operate aircraft in foreign air commerce to and from that foreign country;

(3) a foreign air carrier to provide foreign air transportation between the United States and another country that maintains air service with the foreign country; and

(4) a foreign person to operate aircraft in foreign air commerce between the United States and another country that maintains air service with the foreign country.

E. The President may act under this subsection without notice or a hearing. The suspension remains in effect for as long as the President decides is necessary to ensure the security of aircraft against unlawful seizure. In this case, the IFO or IFU shall, in coordination with Washington Headquarters, immediately notify the foreign carrier that its OpSpecs are suspended or revoked until further notice.

717. ACCIDENT, INCIDENT, NEAR MIDAIR, AND COMPLAINT INVESTIGATION. FAA procedures and responsibilities for aircraft accident and incident (including near midair collisions) notification, investigation, and reporting are prescribed in FAA Order 8020.11, Aircraft Accident and Incident Notification, Investigation, and Reporting. FAA responsibilities remain unchanged when U.S.-registered or U.S.-manufactured aircraft are involved in an accident or incident in a foreign country. The degree of participation in the investigation, however, is subject to ICAO Annex 13, Standards and Recommended Practices for Aircraft Accident Inquiries, U.S. State Department policy, and any special agreement that may apply between the U.S. and any particular country. Public complaints that directly relate to safety shall be investigated as incidents in accordance with Order 8020.11.

718.-732. RESERVED.

[PAGES 2-451 THROUGH 2-458 RESERVED]